

**REMARKS/ARGUMENTS**

In an Office Action mailed March 11, 2004 (Paper No. 8), claims 1, 2, 7-11, 14-16, and 21-22 were rejected under 35 U.S.C. 103(a) as being unpatentable over Resende in view of allegedly admitted prior art. Claims 3 and 12 were rejected under 35 U.S.C. 103(a) as being unpatentable over Resende in view of allegedly admitted prior art and further in view of AN (IEE OPOS (USPOS)\* Comparable Pole Display Software). Claims 4 and 13 were rejected under 35 U.S.C. 103(a) as being unpatentable over Resende and allegedly admitted prior art and further in view of Rogge. Claim 17 was rejected under 35 U.S.C. 103(a) as being unpatentable over allegedly admitted prior art and further in view of Su and Courts. Claims 18-20 were rejected under 35 U.S.C. 103(a) as being unpatentable over allegedly admitted prior art and further in view of Su and Courts and further in view of Perri. These rejections are respectfully traversed.

As a preliminary matter, the Applicants have requested a telephone interview in the last office action response if the arguments and amendments were not considered to place the claims in condition for allowance. Despite this request, the pending office action issued without any telephone interview. Applicants will arrange a telephone interview with the Examiner if possible after submission of this response, but again respectfully request that the Examiner contact the attorney for Applicants to discuss this response if it is considered to fail to place the claims into condition for allowance.

Claims 1, 2, 7-11, 14-16, and 21-22 were rejected under 35 U.S.C. 103(a) as being unpatentable over Resende in view of allegedly admitted prior art. In particular, it is alleged that Resende discloses a plurality of point of sale systems "having proprietary operating systems from two or more different manufacturers" at col. 6, lines 54-67. This rejection is respectfully traversed.

Resende in view of allegedly admitted prior art fails to provide a prima facie basis for the rejection of claims 1, 2, 7-11, 14-16, and 21-22, because it fails to disclose each element of the claimed invention. For example, claim 1 includes "a device programming system operable to program a plurality of point of sale devices; a communications interface coupled to the device programming system, the communications interface operable to receive update requests from the plurality of devices; and wherein the plurality of devices includes devices having proprietary

operating systems from two or more different manufacturers." The assertion that Resende discloses "point of sale X," "having proprietary operating systems from two or more different manufacturers" has no bearing on the claim limitations of "a plurality of point-of sale systems," "the plurality of devices includes devices having proprietary operating systems from two or more  
5 different manufacturers," because 1) the sales point unit 100 of Resende is not a point of sale system, 2) the sales point sub-system of Resende is in fact the operating system of the sales point unit 100 of Resende, 3) Resende discloses a system where all sales point units 100 include the same sales point sub-system "which facilitates interaction of the various components of the sales point unit 100," Resende col. 6, lines 55-56, and 4) Resende entirely fails to teach a "device  
10 programming system operable to program a plurality of point of sale devices; a communications interface coupled to the device programming system, the communications interface operable to receive update requests from the plurality of devices."

In regards to the first point, Figure 1 of the pending application shows that a point of sale system includes an operating system, a device data system, and a device application. Even though  
15 each device has a proprietary operating system, the device data system and device application are also proprietary, as described at page 10, line 32 to page 11, line 23 of the specification. Thus, the device data systems and device applications of the point of sale systems of the prior art, as properly understood, are not compatible with point of sale systems from other manufacturers. The alleged admission by the Applicant at page 2, lines 1-30 likewise only includes a minimal  
20 number of functions that are performed by point of sale devices. In contrast, the sales point unit 100 of Resende includes a plurality of systems 122 through 128 that are compatible with other sales point units 100, as disclosed at col. 6, lines 54-58 of Resende. Notably missing from the description of prior art "point of sale" systems is any mention of vibration sensors 122, smoke sensors 123, panic buttons 124, voice recording modules 126, audio and video camera systems  
25 127 and siren systems 128. If the Examiner is going to accept the Applicants' characterization of the prior art as including a definition of point of sale systems that read credit card data from a credit card and then transmit that data to financial institutions, it is improper to foist upon the Applicants a definition of point of sale system that would encompass the sales point unit 100 of Resende, which is vastly more complex than what one of ordinary skill in the art would  
30 understand to be a point of sale system and which must include a computer to coordinate the

various systems. A brief glance at Figure 7 of Resende establishes that the sales point unit 100 is a far cry from a point of sale system that is used to process credit cards – it includes a display, doors, rotating platforms, etc. It is hard to imagine the sales point unit 100 of Resende sitting on the counter of a retail merchant.

5 This ties in with the second point, that the sales point sub-system of Resende is in fact the operating system of the sales point unit 100 in Figures 3 and 7 of Resende. The only way the disparate systems of Resende could be compatible is with a computer that operates a sales point sub-system. It is clear from the teachings of Resende that the various systems of the sales point unit 100 will not function with different hardware platforms and different operating systems in the  
10 absence of the sales point sub-system. It is irrelevant that the sales point sub-system of the sales point unit 100 can operate on different hardware platforms and with different operating systems, as the sales point sub-system of Resende is not the point of sale system – sales point units 100 of Resende are the point of sale systems. As further described in the specification, a point of sale system can receive a series of messages that are downloaded onto the device after the device is  
15 installed at its operating location. Resende entirely fails to disclose that the sales point sub-system has such functionality. It is therefore improper to equate the operating system of the platform on which the sales-point subsystem operates with the operating system of point of sales devices.

In regards to the third point, Resende does not disclose that the sales point units 100 can be manufactured by multiple manufacturers, or that if they are, that they would have different  
20 sales point sub-systems. The computer that the sales point sub-system operates on is not the sales point unit, it is only one component of the sales point unit 100. Accordingly, the characterization of the operating system of the computer on which the sales point sub-system operates as being the same as the operating system of a point of sales system is flawed.

Finally, and most importantly, the Examiner mischaracterizes Resende in alleging that it  
25 includes “a device programming system operable to program a plurality of point of sale devices; a communications interface coupled to the device programming system, the communications interface operable to receive update requests from the plurality of devices.” The cited sections of Resende only disclose that the control center 14 has monitoring functions for inventory/re-supply, security, and marketing. There is no operability to program a plurality of point of sale devices  
30 disclosed. Why? Because the sales point units 100 of Resende are all commonly owned and

manufactured. The Examiner likewise mischaracterizes "update request" as being disclosed at col 5, line 54-67 of Resende. The only thing received from the sales point units 100 is transaction reports, as admitted by the Examiner. The Examiner states that the same section of Resende includes "update (improve/modification)" - "improve" is not even used in the cited  
5 section, and the only use of "modification" is in reference to the "modification of merchandise inventories." This might be sufficient if claim 1 stated "a merchandise inventory system operable to program a plurality of sales point unit inventories; a communications interface coupled to the device programming system, the communications interface operable to receive inventory update requests from the plurality of sales point units; and wherein the plurality of sales point units  
10 includes sales point units having sales point sub-systems operating on hardware platforms that have proprietary operating systems from two or more different manufacturers." However, the claim does not read as shown, and it is improper for the Examiner to construe the claims as shown in order to reject the claims over Resende.

The remaining bases for rejection of claims 2, 7-11, 14-16, and 21-22 are similarly  
15 flawed, primarily because the objective of the Resende system was to be able to display items for sale at a sales point. For example, claim 2 includes the "system of claim 1 wherein the device programming system further comprises has a device update file for each of the plurality of point of sale devices." It is alleged that this device update file for each of the plurality of point of sale devices is disclosed as col. 5, lines 53-67 to col. 6, lines 1-10 of Resende - as discussed,  
20 updating inventory is not the same as programming a device. Resende does not even suggest that the configuration data is changed at any sales point unit 100, only that the amount of inventory at a sales point unit 100 can be inferred from the transaction reports and that merchandise may then be transported to the sales point unit 100. No change of data at the sales point unit ever occurs in Resende. It is almost ludicrous to construe claim 2 as covering a system for updating  
25 merchandise when the preamble clearly states that it is drawn to a "system for programming point of sale devices." Nobody of ordinary skill in the art would equate stocking a display cabinet with programming a point of sale device. In addition, the cited section reinforces the difference between the sales point unit 100 of Resende and a point of sale device - one of ordinary skill in the art would not understand a point of sales device used for authorization of credit cards to store  
30 any merchandise.

Claim 7 includes "the device programming system further comprises a device setup system operable to set the plurality of point of sale devices for use." Again, the Examiner applies a strained construction of this claim to assert that stocking a display case is the same as "set[ting] the plurality of point of sale devices for use." Again, the preamble of claim 7 through claim 1 makes it clear that the claim is drawn to a system for programming point of sale devices, such that setting the point of sale device for use is more than stocking a display case. Even if point of sale systems had display cases [which they don't], stocking the display would not be sufficient to set it for use. As described in the specification, it would also be necessary to provide telephone numbers, access codes, and other data that Resende entirely fails to suggest or disclose. Resende does not even suggest that the configuration data is changed at any sales point unit 100, only that the amount of inventory at a sales point unit 100 can be inferred from the transaction reports and that merchandise may then be transported to the sales point unit 100. No change of data at the sales point unit ever occurs in Resende.

The same is true of claim 8, which includes "the device programming system further comprises a device update system operable to provide configuration data updates to the plurality of point of sale devices." Stocking a display case is not a configuration data update for a point of sale device. Resende does not even suggest that the configuration data is changed at any sales point unit 100, only that the amount of inventory at a sales point unit 100 can be inferred from the transaction reports and that merchandise may then be transported to the sales point unit 100. No change of data at the sales point unit ever occurs in Resende.

Claim 10 includes a "method for programming point of sale devices comprising: receiving a programming request for a point of sale device; determining which of two or more proprietary operating systems is used by the point of sale device; and transmitting the programming request to the point of sale device based on the proprietary operating system used by the point of sale device." The Examiner relies on the rejection of claim 1 to reject claim 10 - where is "determining which of two or more proprietary operating systems is used by the point of sale device; and transmitting the programming request to the point of sale device based on the proprietary operating system used by the point of sale device" disclosed in Resende? Nowhere. The rejection of claim 10 over Resende is improper because Resende completely fails to disclose "determining which of two or more proprietary operating systems is used by the point of sale

device; and transmitting the programming request to the point of sale device based on the proprietary operating system used by the point of sale device," even using the improper construction of claim 1 adopted by the Examiner. The control center 14 of Resende never determines the operating system of the computer that the sales point sub-system operates on, and even if it could or did, the control center does not use that data to transmit merchandise updates, which, incidentally, are only used to stock the display and which are not used to update any data in the sales point sub-system.

The rejections of claims 11 and 14-16 are improper for reasons discussed above in regards to claim 10 - Resende entirely fails to disclose the majority of the elements of claim 10. Claim 21 includes "selecting a template for the point of sale device; and imposing configuration constraints on the templates based upon a type of credit card that is used at the point of sale device." Resende utterly fails to disclose any such functionality. In addition, the Examiner has re-written the claim to find support for this element in Resende - "based on upon a type of credit card that is used at the point of sale device, select the template." Claim 21 includes "selecting a template" and then "imposing configuration constraints on the templates based upon a type of credit card that is used at the point of sale device," the exact opposite of what is alleged by the Examiner. The template of claim 21 is selected without regard to the type of credit card that is used.

In regards to the rejection of claim 22, the previous comments regarding grammar apply. Further, "determining that a change in a business entity has occurred for a point of sale device" is simply not related to the modification of merchandise inventories.

Claim 17 includes a "method for managing a plurality of point-of-sale devices comprising: storing a file for each point of sale device, each file containing device operating commands, retrieving one of the files in response to a programming request for a corresponding device; and transmitting the file to the corresponding device." It is alleged that Su teaches "storing a file for each point of sale device, each file containing device operating commands." In fact, Su merely discloses storing different operating systems for a single device. Again, this is the opposite of what is claimed - a file is stored for each of a plurality of point of sale devices, not multiple files are stored that can be used with any point of sale device. Thus, if there are 10 point of sale device, there must be 10 files, if there are 100 point of sale device, there must be 100 files. Su

discloses a system whereby if there are 100 point of sale devices, there would only need to be two files, one for each operating system. Thus, the stated combination fails to disclose each claimed element. Likewise, the combination also fails to disclose each claimed element of claims 18 through 20. In particular, in regards to claim 20, Courts (mis-stated as "Scotts") does not  
5 disclose receiving a programming request from a point of sale device, only that the peripherals can download software. In the embodiment described in Courts, the software is downloaded every day – the terminals are all identical, and the system does not distinguish between different types of terminals. The same is true for Su and Resende – the Examiner has merely used the application as a template for piecing together the prior art to yield the invention (and has even  
10 failed to that).

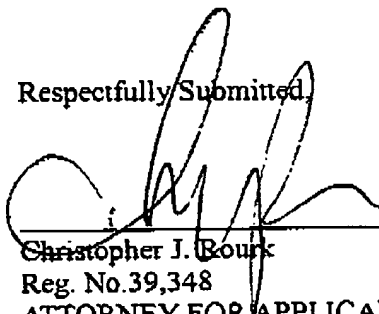
**CONCLUSION**

In view of the foregoing remarks and for various other reasons readily apparent, Applicants submit that all of the claims now present are allowable, and withdrawal of the rejections and a Notice of Allowance are courteously solicited.

- 5 IF ANY IMPEDIMENT TO THE ALLOWANCE OF THE CLAIMS REMAINS AFTER CONSIDERATION OF THIS AMENDMENT, A TELEPHONE INTERVIEW WITH THE UNDERSIGNED AT (214) 969-4669 IS HEREBY REQUESTED SO THAT SUCH IMPEDIMENTS MAY BE RESOLVED AS EXPEDITIOUSLY AS POSSIBLE.

- 10 An additional fee of \$110 for a one month extension of time is believed to be required with this response, a petition for which is hereby made, and for which authorization to charge the deposit account of Akin, Gump, Strauss, Hauer & Feld, L.L.P., No. 01-0657 is hereby given. If any applicable fee or refund has been overlooked, the Commissioner is hereby authorized to charge any fee or credit any refund to the deposit account of Akin, Gump, Strauss, Hauer & Feld, L.L.P., No. 01-0657.

Respectfully Submitted,



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